IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23235 of 2001

Between:

M.Jacob S/o Ruben
R/o H.No.6-92, Raju Colony, Balanagar,
Hyderabad.

..... PETITIONER

AND

1 M/S Telangana Estate and Leasing Ltd., Rep By Its Managing Director Sri Ram Gopal Patwari Plot.No.14, Road No.2, Banjara Hills, Hyderabad-34.
2 Sri Sanjay Patwari S/o Sri.Ram Gopal Patwari M/S Telangana Estate and Leasing Ltd., Plot No.14, Road No.12, Banjara Hills, Hyderabad-34.
3 The Presiding Officer Labour Court No.1, Chandra Vihar, Hyderabad-1.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to I.D.No.140/95 on the file of the Respondent No.3 and after perusing the award dt.7.6.2001 in I.D.No.140/95, quash the same as illegal and unjust and consequently award compensation to the petitioner as applicable under law.

Counsel for the Petitioner: MR.C.M.R.VELU

Counsel for the Respondent Nos.1 and 2: MR CH. RAMESH BABU

Counsel for the Respondent No.3: GP FOR LABOUR

The Court made the following:

ORDER:

This writ petition is filed seeking writ of Certiorari to call for the records relating to I.D.No.140 of 1995 on the file of the Court of the Presiding Officer, Labour Court, Hyderabad and after perusing the award dated 07-06-2001 in the said I.D., to quash the same as illegal and arbitrary.

The case of the petitioner is that he was appointed as a Security Officer by the respondents 1 and 2 to work in their units on a consolidated pay of Rs.2,500/- per month together with Rs.200/- per month towards conveyance charges with effect from 03-08-1992. The appointment order was issued by the second respondent on 23-02-1993 and it provides that the term of service is for three years. About six months thereafter, the petitioner was asked to go on leave by the management and he was promised to pay the leave salary. No reasons were assigned to him as to why he should proceed on leave. After the leave period, when he approached his employer, he was informed to remain on leave. As the employer did not take him into service nor pay the salary, he got issued a legal notice dated 25-02-1994 calling upon the first respondent to take him into service and pay the salary for the leave period. Having received the same, the first respondent did not give any reply. Therefore, the petitioner herein raised a dispute in I.D.No.140 of 1995 before the third respondent-Labour Court against the respondents 1 and 2 for the relief of reinstatement into service with full back wages, continuity of service and all other benefits.

To substantiate the case of the petitioner, he himself was examined as W.W.1 and got marked Exs.W.1 to W.13. On behalf of the respondents, second respondent was examined as M.W.1 and no documentary evidence was adduced. The Labour Court came to the conclusion that the evidence on record clearly indicates that the petitioner-workman had no intention to continue the term of contract period and he himself stopped to attend the duties and started demanding to pay money towards arrears and so the petition is not maintainable and accordingly dismissed by the award dated 07-06-2001. Challenging the same, the present writ petition is filed.

The learned counsel appearing for the petitioner contended that on a wrong assumption of fact, the Labour Court placed reliance on Exs.W.3 to W.5, which are nothing to do with the leave, but they are only representations for correction of the

date of appointment and it is for the respondents to produce the leave application, without there being any material on record, the finding that the petitioner abandoned his service is totally devoid of merit and the findings are not based on record and hence he prays to set aside the same.

On the other hand, the learned counsel appearing for the respondents 1 and 2 contended that without applying any leave and without informing the management, the petitioner abandoned his service and after proper appreciation of evidence on record, the Labour Court gave a finding and there are absolutely no grounds to interfere with the order of the third respondent-Labour Court.

Whenever any body of persons a) having legal authority b) to determine questions affecting the rights on subjects
c) having the duty to act judicially d) act in excess of their legal authority, Certiorari may issue to quash a decision that goes beyond jurisdiction. The object of this writ petition is to keep the exercise of powers by inferior judicial and quasi judicial Tribunals within the limits of the jurisdiction assigned to them by law and to restrain from acting in exercise of their authority by booming to the High Court the procedure of the inferior Court or Tribunal for the purpose of quashing the same. A writ of Certiorari can be issued if the conclusion, upon the consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent errors on the face of the record or based on no evidence at all.

It is not in dispute that the petitioner was appointed as a Security Officer by the respondents 1 and 2 to work in their units on the consolidated pay of Rs.2,500/- per month with effect from 03-08-1992. But the appointment order was issued by the second respondent only on 23-02-1993. The case of the petitioner is that he was orally asked to go on leave after six months of the appointment order. On the other hand, it is the specific case of the respondents 1 and 2 that the petitioner himself stopped in attending the duties. Now, it has to be seen whether the findings of the Tribunal are perverse and are not based upon any evidence.

Section 2 (oo) of the Industrial Disputes Act, 1947 reads as follows:

> "(oo) '*retrenchment'* means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not indicate—

a. voluntary retirement of the workman; or

b. retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

ab. termination of the service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

c. termination of the service of a workman on the ground of continued ill-health."

A perusal of the above provision makes it clear that when the petitioner himself abandoned the service, he will
not fall within the definition of 'retrenchment'. So, the
non-renewal of the contract of the employment is an exemption to term of retrenchment. The Labour Court placing reliance on Exs.W.3 to W.5, came to the conclusion that the petitioner himself absented for duties. The plea of the petitioner that the management asked him to go on leave is not believed by the Labour Court, basing on Exs.W.3 and W.4. To know whether the said findings of the Labour Court are based upon proper appreciation of the evidence on record, it is pertinent to refer to those two said documents.

Admittedly, the petitioner worked for a period of six months. According to the petitioner, after six months, he was asked to go on leave by the management. There is no indication in Ex.W.3, dated 01.09.1993, to the effect that he was asked to go on leave by the management. On the other hand, this document would go to show that on 27-08-1993, the petitioner was called upon to the city office of the second respondent and was informed that his services were no longer required. He made a request under Ex.W.3 to settle his account as he is proceeding to his native place. Ex.W.4 is another letter dated 09-11-1993 which also does not indicate that the management required him to go on leave, but the petitioner requested to clear his dues. Ex.W.5 is his another letter dated 07-02-1994, requesting the management to settle his dues as early as possible. Ex.W.9, which is the legal notice got issued by the petitioner, indicates that the petitioner can resume his duties after completion of his leave period. On the other hand, W.W.1, the petitioner herein, admitted in the cross-examination that he never went on leave. These circumstances indicate that the petitioner abandoned the service and left on his own accord.

The evidence on record, especially Exs.W.3 and W.4, indicate that the petitioner left the service on his own accord. Further, Exs.W.3 to W.5 would indicate that the petitioner wanted to settle his accounts with the management. If really the petitioner

was informed orally about the termination of his services on 27-08-1993, he would have approached the concerned forum immediately thereafter. Having waited for eight (8) long years, he raised a dispute. The observations of the Labour Court cannot be said to be perverse or contrary to the evidence on record. It is the observation of the Labour Court that the petitioner is entitled to raise a dispute under Section 2-A (2) of the I.D. Act, which is maintainable if he files it before the expiry of three years. But, after the expiry of three years, the industrial dispute has been raised. Therefore, the claim of the petitioner was dismissed, as he is not entitled for the relief of reinstatement. Upon proper appreciation of the evidence on record, the Labour Court came to the right conclusion in dismissing the claim of the petitioner. The order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this court.

The writ petition is totally devoid of merit and is accordingly dismissed. In the circumstances, no order as to costs.

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JUSTICE K.C.BHANU

Date: -06-2005.

YCR

To

1 The Presiding Officer, Labour Court No.1, Chandra Vihar, Hyderabad-1.

2. 2 CCs to G.P. for Labour, High Court of A.P., Hyderabad (OUT)

3. 2 C.D. copies.